IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.5926/1999.

N.T.P.C. Limited. **VERSUS** Kalyan and Others.

12.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Abhay Bhandari, Senior Counsel assisted by
Mr.Arun V.S., for the petitioners.
Mr.Bharat Vyas, for the respondent No.4.

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In this writ petition, the petitioner has made the following prayer:-

> "It is, therefore, prayed that the appeal be accepted and the order/judgment and decree dated 8.1.99 in Ref. No.2/87 and order dated 30.9.99 passed by Civil Judge (Sr.Div.) Jaipur District, Jaipur in Execution No. /99 be set aside and it be held that the petitioners are not bound to pay the amount of interest on the compensation and solitium on the amount of award dated 17.3.86 from 11.8.86 upto date and till payment. The execution application filed by respondent may dismissed.
>
> The order of payment of interest of additional compensation & solitium u/s 23 passed in order dated 8.1.99 be set aside.
>
> Such order as your lordship deems fit and necessary by the Hon'ble Court be passed in favour of the petitioner."

A look at the above prayer goes to show that the petitioner has prayed that the appeal be accepted and the

judgment and decree dated 08.01.1999 in Reference No.2/1987 be set aside. At the same time, the prayer is also that the order dated 30.09.1999 passed by the Civil Judge (Sr.Div.) Jaipur District, Jaipur in execution be also set aside.

The objection which has been raised by the learned counsel for the respondents is that against the judgment and decree dated 08.01.1999, a Regular First Appeal, if at all is the remedy provided under the law. It is submitted that same could not be challenged by means of writ petition. It has also been submitted that a composite petition against both the orders judgment and decree dated 08.01.1999 and the order in execution case dated 30.09.1999 could not have been challenged in this writ petition.

Having heard learned counsel for the parties, I am of the view that the composite writ petition could not have been filed and also that the petitioner could not have challenged the judgment and decree dated 08.01.1999 by means of the present writ petition as a regular appeal is provided against the same.

Learned counsel for the petitioner submits that he may be permitted to withdraw the writ petition with liberty to challenge the judgment and decree dated 08.01.1999 and the order dated 30.09.1999 by means of a separate appeal/petition.

In view of the above prayer made by the learned Senior Counsel appearing on behalf of the petitioner, the writ petition is permitted to be withdrawn. The certified copies of the judgment and decree dated 08.01.1999 and the order dated 30.09.1999 are ordered to be returned to the petitioner. The Registry would retain the photostat copies of the same on record.

Consequently, the writ petition as well as the stay application are dismissed as withdrawn.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.